

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

FILED

04 MAY 30 PM 9:02

U.S. DISTRICT COURT
N.D. OF ALABAMA

JAMES MANLEY COST, II,)

Plaintiff,)

vs.)

JOHNATHAN WARNER,)

Defendant.)

ENTERED

JUN 01 2004

Civil Action Number

04-C-0272-NE

MEMORANDUM OPINION

In this *pro se* action, Plaintiff James Manley Cost alleges that Defendant Johnathan Warner physically and verbally abused him while Plaintiff was an inmate of the Morgan County Jail. His specific complaints are these:

Deputy Johnathan Warner starting in Oct. of 2003 became physically abusive toward me. Also in Oct. of 2003 Officer Warner became verbally abusive towards me because I am a gay man. Officer Warner has called me such names as queer or fag or faggot - the most recent being Jan. 29th of 2004 when Officer Warner called me a queer after he opened my mail.

Doc. 1, pp. 3, 4. There is a prison grievance procedure at the Morgan County Jail, but Plaintiff has not utilized it because of "fear of physical assault, and or retaliation by Officer Warner, or other officers unknown to [him]." *Id.*, p. 2.

On its own motion, the Court finds that insofar as the complaint alleges a physical assault by Defendant, the complaint should be amended to allege with particularity the physical acts of which the Plaintiff complains.

Moreover, the complaint is due to be dismissed for Plaintiff's failure to file a grievance with the jail officials, pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a); *Alexander v. Hawk*, 159 F.3d 1321 (11th Cir.1998); *Higginbotham v. Carter*, 223 F.3d 1259 (11th Cir.2000).

By separate order, the complaint will be dismissed, without prejudice to Plaintiff's right to seek its reinstatement upon the exhaustion of the remedies provided by the grievance procedures of the Morgan County Jail.

Done this 25th of May, 2004.

A handwritten signature in black ink, appearing to read "U.W. Clemon", written over a horizontal line.

Chief United States District Judge
U.W. Clemon